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	NAME	COMPANY NAME	TELECOPY NO.
TO:	Examiner Joseph F. Edell	U.S. Patent and Trademark Office	571-273-8300

FROM: Richard B. Lazarus

DIRECT DIAL: 202-289-1313

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Re: Serial No. 09/871,199

Applicant: James M. Kain

Filed: May 31, 2001

For: JUVENILE SEAT ARMREST

Attached please find the following:

Notice of Appeal (1 page)

Pre-Appeal Brief Request for Review (5 pages)



Richard B. Lazarus

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CLIENT# 20341

MATTER# 67618

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Attorney Docket No: 20341-67618
PATENT

IN THE UNITED STATES PATENT AND TRADEMARK O10125999

Applicant: James M. KAIN
Serial No.: 09/871,199 Art Unit: 3636
Filed: May 31, 2001 Examiner: Joseph F. Edell
For: JUVENILE SEAT ARMREST

Pre-Appeal Brief Request for Review

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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Sir:

Appellant hereby requests review of the decision of the primary examiner mailed October 17, 2005 as modified by the advisory action of January 5, 2006.

Claim objections and the 35 U.S.C. 112 rejection.

The October 17, 2005 objections to claims 2, 3, 6, 13 and 25 and the 35 U.S.C. 112 rejection of claims 11 and 12 are believed overcome by the December 16, 2005 amendment which is indicated (in the January 5, 2006 advisory action) as approved for entry for purposes of appeal.

The 35 U.S.C. 102(b) rejection.

Claims 2, 3, and 10-12 are rejected as anticipated by Markel (U.S. Patent No. 5,316,373). Claims 2-3 and 10 are cancelled. Claims 11 and 12 require "a support mount appended to the arm." Applicant's disclosure describes "a support mount 12 appended to arm 11" (e.g., page 3, lines 11-12) and at, for example, Fig. 3 mount 12 and arm 11 are shown appended. Markel's arm 12 does not have an appended support mount. The office action at page 3 states that Markel discloses a support mount 14 appended to the arm, but as described at column 2, lines 55-61 of Markel arm support 12 may be removed from control housing 14. Thus, arm support 12 is not appended to housing 14. For at least this reason, claims 11-12 avoid anticipation by Markel.

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Each of the following obviousness rejections lacks proper motivation for the combination and the combination does not arrive at the claimed structure.

The 35 U.S.C. 103(a) rejection of claims 6-8, 10 and 12 over Lemmeyer et al and Rowland.

Claims 6-8, 10 and 12 are rejected as obvious over Lemmeyer et al (U.S. Patent No. 6,478,372) in view of Rowland (U.S. Patent No. 4,366,980). The rejection states that

it would have been obvious... to modify the seat assembly of Lemmeyer et al. such that each flange of the support mount is formed to include upper wings rising above the top surface of the arm and away from the seat bottom and the first fastener is coupled to the upper wing of each flange and the ridge of the seat back such that the first fastener is arranged to lie above the top surface of the arm, such as the seat assembly disclosed in Rowland. One would have been motivated to make such a modification in view of the suggestion in Rowland that the upper wing of the support mount provides a channel length that mates exactly with the seat back to be fastened and supported along a vertically planar length of the seat back above the armrest. (See page 5, last 8 lines and page 6, first 2 lines of the office action).

Rowland describes the arm attachment to the seat back by stating

[e]ach arm 54 and 55 has a generally horizontal front portion 201 or 202 and a steeply sloping rear portion rear portion 203 or 204, preferably made integrally from bent tubular stock identical to that of the other frame members. Each of the rear portions 203, 204 terminates in a hemispherical end and an inboard length 205, 206, mates exactly with and is welded to the oblique planar edge 78 or 79. The rear portions 203, 204 beyond the length 205, 206 diverge from the members 74 or 75. (Column 7, lines 8-17).

Lemmeyer et al. describes the arm attachment to the seat by stating

[t]he tongue 110 has a height that is substantially equal to the height of the groove 101 in the cantilever armrest 16. When the groove 101 is channeled over the tongue 110, the top and bottom surfaces 104, 106, respectively, of the armrest 16 abut upper and lower shelves 112, 114, respectively, surrounding the tongue 110.... Once the tongue-in-groove attachment has been made between the grooves 101 in the cantilever armrests 16 and the respective recessed tongues 102 of the backrest 12, fasteners, such as bolts, rivets, or other conventional fasteners, are channeled through holes 120 in the cantilever armrests 16 and corresponding holes 122 in the recessed tongues 110. (Column 5, line 65 - column 6, line 15).

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Thus, Lemmeyer et al. attaches armrest 16 to the seat tongue 110 with top and bottom arm surfaces 104, 106 abutting upper and lower shelves 112, 114. Modification of Lemmeyer et al. by adding an upper or lower wing to the armrest would not permit the armrest 16 to fit between the shelves 112, 114 and would require removal of the shelves (and other structure). The need to redesign Lemmeyer et al. to accommodate the suggested changes from Rowland weighs against a conclusion that such changes would have been obvious. For at least this reason, it would not have been obvious to modify Lemmeyer et al. by providing a fastener above the arm which extends through inner and outer support mount flanges (claim 6) or providing a fastener above the arm which extends through the arm support mount upper wing (claim 12).

Furthermore, modification of Lemmeyer et al. by adding Rowland's wing 204 (even if there were sufficient motivation, and such is not conceded) would not result in the inner and outer flanges of claims 6-9. Rowland's wing 204 connects to only one side of the seat back and would provide only one flange or wing, not two as required by claims 6-9. Further, even if Rowland's wing 204 were added to Lemmeyer et al.'s flange there would be no fastener that extends above the arm that extends through the inner and outer flanges (claim 6) because Rowland's wing 204 does not have any fasteners as recited in these claims and the combination with Lemmeyer et al. would not provide them.

The 35 U.S.C. 103(a) rejection of claims 2, 3, 9, 11 and 13-29 over Lemmeyer et al, Rowland and Mitchell.

Claims 2, 3, 9, 11 and 13-29 are rejected as obvious over Lemmeyer et al in view of Rowland and Mitchell (U.S. Patent No. 207,764). Regarding claim 9, the combination of Lemmeyer et al. and Rowland is improper for the reasons noted above with respect to claim 6.

Regarding claim 11, modification of Lemmeyer et al. by adding an upper or lower wing to the armrest would not permit the armrest 16 to fit between the shelves 112, 114 and would require removal of the shelves (and other structure). The need to redesign Lemmeyer et al. to accommodate the suggested changes from Rowland weighs against a conclusion that such changes would have been obvious. For at least this reason, it would not have been obvious to modify Lemmeyer et al. by providing a fastener above the arm coupled to seat and support mount apertures with a lower wing and second fastener (claim 11).

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Regarding claims 13 and 15, the office action at page 6 points to the generally flat load support panel discussed at column 2, lines 34-37 of Mitchell and at page 7 urges that it would have been obvious to further modify Lemmeyer et al. by providing a generally flat load support panel such as provided by Mitchell. Mitchell at column 2, lines 34-37 discusses a shoulder of the arm, resting against the front face of the post. It is not evident how such shoulder could be provided on the U-shaped armrests 16 of Lemmeyer et al. to provide the "load support panel fixed to the cantilevered armrest to lie in a fixed position relative to the arm and the support mount and to engage a ridge of the seat back to block pivotable movement of the cantilevered armrest toward the seat bottom about a pivot axis established by the first fastener" as provided in applicant's claim 13. A drawing showing Lemmeyer et al.'s armrest 16 with the proposed modification was requested (page 10, lines 10-13 of the December 16, 2005 amendment) but instead a drawing of Mitchell was provided. The drawing provided does not show, and it is not evident, how Mitchell's alleged load support panel could be used in Lemmeyer et al.'s armrest. Lemmeyer et al.'s armrest is supported against pivotal movement by fasteners through holes 120 and shelves 112, 114. There is no motivation to provide Lemmeyer et al.'s armrest with redundant support. The suggested combination appears to result from improper hindsight.

Claim 15 requires "a generally flat load support panel arranged so that only an end of the generally flat load support panel abuts the seat back to block pivotable movement of the cantilevered arm relative to the seat back" and it is not evident how Mitchell's shoulder could be provided on the U-shaped armrests 16 of Lemmeyer et al. to provide this claim 15 structure.

Claim 25 recites "means for fastening the support mount to the seat back above and below the arm and on a side of the side edge to support the arm in a cantilevered position to stabilize the arm against movement" which in accordance with 35 U.S.C. 112, sixth paragraph shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof. The corresponding structure has been discussed above with respect to claims 6-9 and 11-24 and for the reasons discussed above the prior art does not teach or suggest such structure. In short, none of the prior art, taken alone or in combination, provide the support mount with fastening above, below and on a side edge as claimed in claim 25. For at least these reasons, the prior art does not teach or suggest the structure of claim 25 (and dependent claim 26) or its equivalent.

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Claim 27 recites an armrest, first fastener coupled to upper wings and second fastener coupled to lower wings. As already stated herein, there is insufficient motivation to combine Lemmeyer et al, Rowland and Mitchell. Even if they were combined they would not arrive at the combination as recited in claim 27.

The 35 U.S.C. 103(a) rejection of claims 4 and 31 over Lemmeyer et al., Mitchell and Herpel.

Claims 4 and 31 are rejected as obvious over Lemmeyer et al., Mitchell and Herpel (U.S. Patent No. 3,542,427). There would have been no motivation to use Herpel's different length fasteners to attach both armrests as alleged in the office action. The use of a fastener through holes 120 in both armrests (as asserted in the final office action) in Lemmeyer et al. would result in a fastener in front of the seat back. Such arrangement would render the backrest inoperable as the child's back would rest against the fastener and such would be uncomfortable and/or unsafe. Claims 4 and 31 are dependent from claims 11 and 27, respectively and are allowable for at least the same reasons as discussed herein with respect to claims 11 and 27.

The 35 U.S.C. 103(a) rejection of claims 5 and 30 over Lemmeyer, Mitchell and Van Hekken.

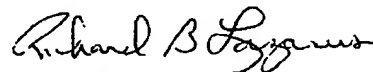
Claims 5 and 30 are rejected as obvious over Lemmeyer et al., Mitchell and Van Hekken (U.S. Patent No. 5,297,851). Claims 5 and 30 are dependent from claims 11 and 27, respectively and are allowable for at least the same reasons as discussed herein with respect to claims 11 and 27.

In view of the above, it is submitted that all of the claims (Nos. 4-9 and 11-31) avoid the rejections of record and are in condition for allowance and such action is, respectfully, requested.

Extension of Time fees sufficient to effect a timely response and shortages in other fees may be charged, or any overpayment in fees be credited, to the Account of Barnes & Thornburg LLP, Deposit Account No. 10-0435 (20341-67618).

Respectfully submitted,

BARNES & THORNBURG LLP



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